



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XB109

Taking and Importing Marine Mammals; Naval Explosive Ordnance Disposal School
Training Operations at Eglin Air Force Base, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of a Letter of Authorization (LOA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and
implementing regulations, notification is hereby given that a LOA has been issued to the
U.S. Department of the Air Force, Headquarters 96th Air Base Wing (U.S. Air Force),
Eglin Air Force Base (Eglin AFB) to take marine mammals, by Level B harassment,
incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations at
Eglin AFB, Florida from approximately April, 2012, to April, 2017. The U.S. Air Force
activities are considered military readiness activities pursuant to the MMPA, as amended
by the National Defense Authorization Act of 2004 (NDAA).

DATES: Effective April 23, 2012, through April 24, 2017.

ADDRESSES: The LOA and supporting documentation are available by writing to P.
Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources,
National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-
3225, by telephoning one of the contacts listed here (see FOR INFORMATION
CONTACT), or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address. NMFS has prepared an Environmental Assessment titled “Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, by Level B Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida” (EA) and Finding of No Significant Impact (FONSI) in accordance with the National Environmental Policy Act (NEPA) as implemented by regulations published by the Council on Environmental Quality (CEQ).

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce (Secretary), upon request, to allow for a period of not more than five years, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Alternatively, if the taking is limited to harassment, certain determinations are made and the authorization does not exceed one year, an IHA may be issued. Upon making a finding that an application for incidental take is adequate and complete, NMFS commences the incidental take authorization process by publishing in the Federal Register a notice of receipt of an application for the implementation of regulations or a proposed IHA initiating a period for public review and comment.

An authorization for the incidental takings may be granted if NMFS finds that the taking during the period for the authorization will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth to achieve the least practicable adverse impact.

NMFS has defined “negligible impact” in 50 CFR 216.103 as: “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108-36) modified the MMPA by removing the “small numbers” and “specified geographic region” limitations and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (section 3(18)(B) of the MMPA): “(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or behavioral patterns are abandoned or significantly altered (Level B harassment).”

Summary of Request

On November 6, 2009, NMFS received an application from the U.S. Air Force requesting an authorization for the take of marine mammals incidental to NEODS

training operations. These training operations are properly considered “military readiness activity” under the provisions of the NDAA. On January, 15, 2010, NMFS published notification of receipt (75 FR 2490) in the Federal Register for the U.S. Air Force’s NEODS training operations and determined that its application was adequate and complete. The Federal Register notice solicited comments from the public. After the close of the public comment period and review of comments, NMFS, on October 1, 2010, NMFS published a notification of a proposed rule (75 FR 60694) with the text of the proposed rule in the Federal Register for the U.S. Air Force’s NEODS training operations. The Federal Register notice solicited public comments on the preliminary approach taken in the proposed rule. On November 30, 2010, NMFS received a revised application from the U.S. Air Force which addressed public comments received during the comment period for the proposed rule. The application re-estimated the Zones of Influence (ZOI) and associated takes on revised thresholds for Level A and Level B harassment. On December 5, 2011, NMFS received a revised application from the U.S. Air Force with revised monitoring and mitigation measures to reduce the potential for lethal take of bottlenose dolphins due to an event involving the mortality of common dolphins associated with similar explosive training operations at the U.S. Navy’s Silver Strand Training Complex near San Diego, California. On March 22, 2012, NMFS published a notice of final rule (77 FR 16718) and final regulation in the Federal Register authorizing take by Level B harassment of Atlantic bottlenose dolphins (Tursiops truncatus) incidental to the U.S. Air Force’s NEODS training operations. The final regulations are codified in the Code of Federal Regulations at 50 CFR 217.80-89.

Pursuant to these regulations, NMFS is issuing this LOA to authorize the take, by Level B (behavioral) harassment, of Atlantic bottlenose dolphins incidental to conducting NEODS training operations and testing at Eglin Gulf Test and Training Range (EGTTR) at property off Santa Rosa Island, FL, in the northern Gulf of Mexico (GOM) in accordance with the issuance of one or more Letters of Authorization over a 5-year period. Estimated take would average approximately 10 animals per year; approximately 50 animals over the 5-year period.

Specified Activities

The specified activities covered by this 5-year LOA are identical to those covered in the regulations. NEODS missions involve underwater detonations of small, live explosive charges adjacent to inert mines. The NEODS may conduct up to eight two-day demolition training events annually; these missions may occur at any time of the year. Each demolition training event involves a maximum of five detonations. Up to 20 five-pound (lb) charges (five lbs net explosive weight [NEW] per charge) and 20 ten-lb charges (ten lbs NEW per charge) would be detonated annually in the GOM, approximately three nautical miles (5.6 kilometers) offshore of Eglin AFB. Detonations would be conducted on the sea floor, adjacent to an inert mine, at a depth of approximately 60 feet (18.3 meters). Additional information on the NEODS training operations is contained in the application and final rule, which is available upon request (see ADDRESSES).

Mitigation and Monitoring

The mitigation and monitoring included in this LOA are identical to those required by the governing regulations. In summary, they include:

(1) The time of detonation will be limited to daylight hours (i.e., an hour after sunrise and an hour before sunset);

(2) NEODS missions would be delayed if the Beaufort sea state is greater than scale number three (i.e., if whitecaps cover more than 50 percent of the surface or waves are greater than 0.9 meters (m) (3 feet [ft]) to ensure visibility of marine mammals to observers);

(3) Time delays longer than 10 minutes will not be used and initiation of the timer device will not start until the mitigation-monitoring zone is clear of marine mammals for 30 minutes;

(4) Observers on boats and/or helicopters will conduct monitoring pre-mission, throughout the mission, and post-mission for the presence of marine mammals and other protected species indicators;

(5) NEODS mission would be postponed or suspended if marine mammals and/or large concentrations of protected species indicators are observed within or about to enter the mitigation-monitoring zone:

(6) After a delay due to the aforementioned wildlife being detected in the mitigation-monitoring zone, the mission would not be continued until the wildlife in question is confirmed to be outside the mitigation-monitoring zone, the animal(s) are moving away from the mission area, and the animal(s) does not re-enter the mitigation-monitoring zone for 30 minutes; and

(7) Post-mission monitoring would be conducted to report any injured, seriously injured, or dead marine mammals.

Negligible Impact Determination

As analyzed and described in further detail in the preamble to the final regulations, taking authorized under the regulations will have a negligible impact on the affected species and stocks of marine mammals.

Authorization

Accordingly, NMFS has issued an LOA to the U.S. Air Force authorizing takes of marine mammals incidental to NEODS training operations at Eglin AFB. Issuance of this LOA was based on NMFS's determination that the total number of marine mammals taken by the activity as a whole shall have no more than a negligible impact on the affected marine mammal species, Atlantic bottlenose dolphin. The basis for this determination is described in the preamble to the final rule (77 FR 16718, March 22, 2012). NMFS also determined that the LOA will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

Dated: April 24, 2012

Helen M. Golde,
Acting Director,
Office of Protected Resources,
National Marine Fisheries Service.

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